

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL W. TAYLOR and DEPARTMENT OF THE ARMY,
RED RIVER ARMY DEPOT, Texarkana, Tex.

*Docket No. 96-1902; Submitted on the Record;
Issued August 12, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's benefits effective August 20, 1995.

On May 23, 1986 appellant, then a 30-year-old mechanic, filed a notice of traumatic injury alleging that he injured his back on May 20, 1986 when he was knocked into a work table in the course of his federal employment. The Office accepted the claim for extension injury to dorsal-lumbar spine and appellant returned to limited duty. On August 4, 1988 appellant filed a notice of traumatic injury alleging that he injured his back on August 3, 1988 when he fell over backwards in a broken chair in the course of his federal employment. The Office subsequently accepted the claim for a lumbar strain and appellant was placed on the periodic rolls to receive compensation for total temporary disability.¹

On July 18, 1994 Dr. Jeffrey T. De Haan, appellant's treating physician and a Board-certified orthopedic surgeon, stated that he examined appellant on June 21, 1994 due to complaints appellant experienced in his shoulder, neck and lower back. He stated that appellant's shoulder was improving and objectively his limited range of motion was slowly progressing. Dr. De Haan noted that the cervical and lumbar spines were showing consistency and that there has been no drastic increase in the amount of neurogenic claudication or the amount of pain experienced. He reported that the radiographs were fairly consistent showing degenerative arthritis and spinal stenosis. Dr. De Haan further reported that the shoulder was status post acromioplasty changes. He stated that the effects of the work injury had not ceased because appellant had not been pain free since the injury. Dr. De Haan indicated that the current disability was due to the work injury and that it prevented him from returning to his previous job. He indicated that appellant was restricted from returning to his prior employment "because he may put himself and/or other people at undue risk for injury." Dr. De Haan indicated that

¹ The Office combined the claims for appellant's injuries sustained on May 20, 1986 and August 3, 1988.

appellant could do sedentary work with intervening episodes of walking if he had to sit for more than 15 minutes. He further stated that appellant could lift no more than 5 to 10 pounds and that he could do no repetitive bending, stooping, climbing or crawling. Dr. De Haan stated that the disability from work was continuing and that it would probably be permanent. He indicated that he did not expect a full recovery or that appellant could return to his previous work.

On November 1, 1994 the Office referred appellant, along with the record and a statement of accepted facts to Dr. Norris Knight, a Board-certified orthopedic surgeon, for a second opinion examination.

On May 25, 1995 Dr. Knight provided his second opinion examination.² Dr. Knight reviewed appellant's history of injuries and his symptomology. He noted that on physical examination appellant had pain in all degrees of motion. Dr. Knight stated that he found marked restriction in the lumbar spine yet appellant went from a lying position to a sitting position on the examining table flexing the lumbar spine and hips to 90 degrees without any pain. He recorded that appellant was unable to walk on his toes or heels due to pain. Dr. Knight further stated that straight leg raises were markedly positive lying with back and leg pain under 10 degrees. He reported breakaway nonanatomical weakness in dorsiflexion of the great toe, dorsiflexion inversion of the foot, and both bilateral on flexion and extension of the elbows. Dr. Knight found superficial tenderness throughout the entire lumbar and cervical spine. He stated that, therefore, "his nonanatomical exaggeration symptoms include marked restricted motion in all directions, yet he is able to flex his lumbar spine to 90 degrees from a lying to a sitting position, marked positive straight leg raising signs under 10 degrees, breakaway weakness in the lowers and uppers, 3 plus positive chair test, and inability to heel and toe walk due to pain, yet he is able to ambulate without a limp." Dr. Knight also noted a nonanatomical finding in the vertebral column consisting of superficial tenderness without muscle atrophy. He indicated he interpreted x-rays and magnetic resonance imaging (MRI) scans of the cervical spine, lumbar spine, and shoulder as normal. Dr. Knight further noted that appellant's lumbar myelogram and discograms were normal. He diagnosed a nonorganic back pathology. Dr. Knight stated that the objective studies failed to support significant abnormalities. Consequently, he concluded that appellant was not incapacitated by any documented medical condition and that he could resume his prior employment as a heavy equipment mechanic. He found that appellant had no physical impairment.

On July 11, 1995 the Office issued a notice of proposed termination of compensation and medical benefits." The Office indicated that the weight of the medical evidence failed to establish continuing disability as a result of appellant's August 3, 1988 accepted employment injury. In reaching this determination, the Office stated that the opinion of Dr. De Haan, supporting continued employment-related disability, was not supported by objective evidence or adequate rationale like the contrary report of Dr. Knight. Appellant was given 30 days to submit additional argument or evidence.

² In a decision dated February 10, 1995, the Office suspended appellant's compensation based on his refusal to attend the scheduled second opinion medical examination. Since more than one year elapsed from the date of issuance of this decision and the date of filing of appellant's appeal on May 31, 1996, the Board lacks jurisdiction to review that decision; *see* 20 C.F.R. § 501.3(d).

By decision dated August 24, 1995, the Office terminated appellant's benefits effective August 20, 1995. The Office indicated that appellant failed to submit additional argument or evidence.

The Board finds that the Office met its burden in terminating appellant's benefits effective August 20, 1995.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.³ After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.⁴ Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.⁵ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.⁶

In the present case, Dr. De Haan, appellant's treating physician and a Board-certified orthopedic surgeon, indicated that "[T]he effects of the work injury have not ceased at this time based on the fact that he has not had a pain-free period since his date of injury." He failed to explain how his examination or the objective tests of record supported his conclusion that appellant continued to suffer from an employment-related disability. Dr. De Haan's opinion, therefore, is entitled to little weight because it is based solely on appellant's complaints and was not explained in light of the objective evidence of record.⁷ In contrast, Dr. Knight, a Board-certified orthopedic surgeon, provided a well-reasoned medical opinion explaining that appellant no longer had an employment-related disability because objective tests such as x-rays, MRIs, myelograms and discograms yielded normal results and because appellant's physical complaints were not anatomically supported. Dr. Knight's opinion is, therefore, entitled to the weight of the medical evidence as the one well-rationalized opinion of record.⁸ Consequently, the Office met its burden to terminate appellant's benefits effective August 20, 1995.

³ *Frederick Justiniano*, 45 ECAB 491 (1994).

⁴ *Id.*

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *Id.*

⁷ *Judith A. Peot*, 46 ECAB 1036 (1995).

⁸ *Ruby I. Fish*, 46 ECAB 276 (1994).

The decision of the Office of Workers' Compensation Programs dated August 24, 1995 is affirmed.

Dated, Washington, D.C.
August 12, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member